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- 2) The first phase will address all issues triable to a jury other than damages (including infringement, invalidity, and willfulness), and defendants' equitable claim of inequitable conduct, and will proceed in accordance with the schedule adopted by the Court in its August 27, 2008 Order re Case Schedule;
- 3) If following the first phase any defendant is found to infringe a valid and enforceable patent claim and the parties are unable to reach agreement as to the amount of damages that should be assessed, a second phase will address the issue of damages;
- 4) The parties agree to meet and confer regarding the schedule for damages-related expert disclosures and discovery following resolution of liability;
- 5) In the event the court declines to bifurcate damages, the parties agree to meet and confer to schedule and complete any remaining damages discovery and damages-related expert disclosures within the current schedule set forth in the August 27, 2008 Order re Case Schedule.

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		STIPULATION AND [PROPOSED] ORDER RE: BIFURCATION OF DAMAGES	3 CASE No. C-05-03955 MHP

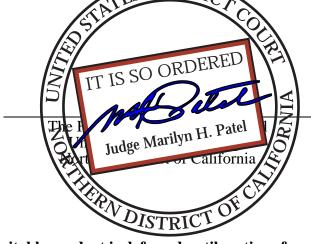
ORDER

Pursuant to the foregoing Stipulation, and good cause appearing therefore, the Court hereby ORDERS:

- 1) Trial in this matter be bifurcated into two phases;
- 2) The first phase will address all issues triable to a jury other than damages (including infringement, invalidity, and willfulness), and defendants'-equitable claim of inequitable conduct, and will proceed in accordance with the schedule adopted by the Court in its August 27, 2008 Order re Case Schedule; *
- 3) If following the first phase any defendant is found to infringe a valid and enforceable patent claim and the parties are unable to reach agreement as to the amount of damages that should be assessed, a second phase will address the issue of damages;
- 4) The parties agree to meet and confer regarding the schedule for damages-related expert disclosures and discovery following resolution of liability.

IT IS SO ORDERED.

Dated: November <u>24</u>, 2008



* The scheduling of trial on defendants' inequitable conduct is deferred until motions for summary judgment are heard.